MOTION FILED
MAY 15 1981

Nos. 80-885
80-1103

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

HENDRICKS COUNTY RURAL ELECTRIC MEMBERSHIP CORPORATION,
Respondent.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

MALLEABLE IRON RANGE COMPANY,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF FOR THE UAW AS AMICUS CURIAE

JOHN A. FILLION
General Counsel
LEONARD PAGE
Associate General Counsel
JUDITH SCOTT
Assistant General Counsel
8000 E. Jefferson
Detroit, Michigan 48214
Attorneys for UAW

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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MOTION BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of the position of the petitioner in this case.

INTEREST OF THE AFL-CIO AND THE ISSUE TO BE COVERED IN THE AFL-CIO'S BRIEF AMICUS CURIAE

The AFL-CIO is a federation of 101 national and international unions with a total membership of 13,500,000 working men and women. The resolution of the question presented in this case concerning the status of confidential employees under the National Labor Relations Act, as amended, will determine whether or not hundreds of thousands of individuals are permitted to exercise the right to make a free choice of a collective bargaining representative under the system established by Congress in that Act for making such a choice and with the protections that system provides. The Federation and its affiliates that represent employees under the NLRA therefore have a major interest in the outcome.

The attached brief *amicus curiae* develops in detail the law as of 1947 concerning the scope of the term "employee" (defined in § 2(3) of the Wagner Act) with regard to "supervisory" and "confidential" employees and traces the evolution of the proposals in Congress that lead to the exclusion from the Act of "supervisors" as defined in § 2(11) of the NLRA, as amended by the Taft-Hartley Act. That legislative history in our view demonstrates that Congress intended that exclusion to affect foremen and the higher ranks of management but not to deny the Act's protections to individuals who have access to "confidential" information or even to freeze the law as it stood at the time (which excluded individuals with access to confidential *labor relations* information from collective bargaining) into statutory form. Thus, we submit that while the holding of *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267 (1974) regarding the status of managerial employees is sound, the dictum in that case concerning the status of confidential employees (*id.* at 283-284) cannot be squared with the statute or with the underlying Congressional intent and should not be followed here.

CONCLUSION

For the above stated reasons this motion for leave to file a brief *amicus curiae* should be granted.

Respectfully submitted,

DAVID M. SILBERMAN
1000 Connecticut Ave., N.W.
Washington, D.C. 20036
GEORGE KAUFMANN
2101 L Street, N.W.
Washington, D.C. 20037

(Of Counsel)

J. ALBERT WOLL
815 Fifteenth Street, N.W.
Washington, D.C. 20005
LAURENCE GOLD
815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5390
(Counsel of Record)